



**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**APPEAL DECISION SUMMARY**

**APPEAL No:** 2010-0302

**DECISION DATE:** March 19, 2010

**OUTCOME:** (check one)

☒ X SUSTAINED    ☐ REVERSED    ☐ REMANDED  
☐ INVALID/FULL  
☐ SUSTAINED and REMANDED  
☐ REVERSED and REMANDED  
☐ AGENCY ERROR/OTHER

**ISSUE ON APPEAL:**                      Excess resources –Aged, Blind or Disabled (ABD)

**GENERAL RULE OF LAW:**    Standards ABD resource determination:

**Conclusions of Law and Policy:**

1. The State plan must specify that in determining financial eligibility of individuals, the agency will apply the cash assistance financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status, unless the agency chooses to apply less restrictive allowable income and resource methodologies. If the agency chooses to apply less restrictive income and resource methodologies, the State plan must specify the less restrictive methodologies that will be used, and the eligibility groups to which the less restrictive methodologies will be applied. Code of Federal Regulations, 42 CFR §435.601(b), (f).
2. As a program based on need, Medicaid uses the value of a person's countable resources as one of two financial criteria in determining eligibility. The other criterion is income. United States Code, 42USC§1396a, (a) 17(B); Medicaid Manual, Volume XIII, M1110.001, A (p. 1).
3. The resource limit is the maximum dollar amount of countable assets an individual, couple, or family may own and still meet the established criteria for Medical Assistance in an ABD category. These amounts are established by law. The Virginia Medicaid program uses the same resource limits for determining Medicaid eligibility as those established by Supplemental Security Income (SSI). Code of Federal

Regulations, 42 CFR §435.845; Medicaid Manual, Volume XIII, M1110.003, A-B (p. 2).

4. For Categorically Needy, Categorically Needy Non-money Payment and Medically Needy ABD eligible groups, the resource limit for one person is \$2,000. For the Medically Indigent ABD eligible groups, the resource limit for one person is \$4,000. Medicaid Manual, Volume XIII, M1110.003, B 2 (p. 2).
5. Resources are cash and any other personal or real property that an individual owns, or has the power to convert to cash and is not legally restricted from using for his support and maintenance. Medicaid Manual, Volume XIII, S1110.100, B 1 (p. 3).
6. Make all resource determinations per calendar month. Resource eligibility exists for the full month if countable resources were at or below the resource standard for any part of the month. Medicaid Manual, Volume XIII, M1110.600, A (p. 18).
7. The value of any asset that meets the definition of a resource counts against the applicable resource limit, unless otherwise excluded. Medicaid Manual, Volume XIII, S1110.200, (p. 6).
8. The current market value (CMV) of a resource:
  - For real property is 100% of the local assessed value.
  - Equity value (EV) is the CMV of a resource minus any encumbrance on it.

Virginia Administrative Code, 12 VAC 30-40-240, B, 1; Medicaid Manual, Volume XIII, M1110.400, A 1, a, b (p. 10).
9. The eligibility worker must verify the value of all countable, non-excluded resources. Medicaid Manual, Volume XIII, M0130.200, H (p. 8).
10. Ownership interests in property, whether real or personal, can occur in various types and forms. Since the type and form of ownership may affect the value of property and even its status as a resource, they are significant in determining resource eligibility. Medicaid Manual, Volume XIII, M1110.510, C 1 (p. 12).
11. Ownership of other real property [other than the home] generally precludes eligibility. The property's equity value is counted with all other countable resources. One exception to this policy is if the property cannot be sold after a reasonable effort to sell it has been made. Medicaid Manual, Volume XIII, M1130.160, A 1; A 2 (p. 16).
12. Every person not prohibited by § [64.1-47](#) may, by will, dispose of any estate to which he shall be entitled, at his death, and which, if not so disposed of, would devolve upon his heirs, personal representative or next of kin. The power hereby given shall extend to any estate, right or interest to which the testator may be entitled at his death, notwithstanding he may become so entitled subsequently to the execution of the will. Code of Virginia, § 64.1-46.

13. When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in parcenary to such of his kindred, male and female, in the following course:

First. To the surviving spouse of the intestate, unless the intestate is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, in which case two-thirds of such estate shall pass to all the intestate's children and their descendants and the remaining one-third of such estate shall pass to the intestate's surviving spouse.

Second. If there be no surviving spouse, then the whole shall go to all the intestate's children and their descendants.

Code of Virginia, § 64.1-1.

14. Property in the form of an interest in an undivided estate is to be regarded as an asset when the value of the interest plus all other resources exceed the applicable resource limit, unless it is considered unsaleable for reasons other than being an undivided estate. An heir can initiate a court action to partition. If a partition suit is necessary (because at least one other owner of or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value. However, if such an action would not result in the applicant/recipient securing title to property having value substantially in excess of the cost of the court action, the property would not be regarded as an asset. Medicaid Manual, Volume XIII, M1120.215, A (p. 26).

15. An ownership interest in an unprobated estate may be a resource if an individual:
- is an heir or relative of the deceased; or
  - receives any income from the property; or
  - under State intestacy laws, has acquired rights in the property due to the death of the deceased.

Medicaid Manual, Volume XIII, M1120.215, A (p. 26).

16. There is an ownership interest in an unprobated estate if:
- documents (e.g., a will or court records) indicate an individual is an heir to property of a deceased; or
  - an individual has use of a deceased's property or receive income from it; or
  - documents establish, or the individual alleges, a relationship between himself and the deceased which, under State intestacy laws, awards the individual a share in the distribution of the deceased property; and
  - the inheritance, use of income, and distributions are uncontested.

Medicaid Manual, Volume XIII, M1120.010, C 2 (p. 3).

17. An individual's interest in an unprobated estate is a countable resource. An heir can initiate a court action to partition. Medicaid Manual, Volume XIII, M1120.215, C 2 (p. 27).

18. For property which is an interest in an undivided estate and for jointly owned property when a co-owner refuses to sell: An initial reasonable effort to sell shall have been made when all other co-owners have refused to purchase the applicant's or recipient's share, and at least one of the other co-owners has refused to agree to sell the property. After an initial effort to sell has been made, the individual must immediately make a continuing effort to sell in accordance with 3.d. below. Medicaid Manual, Volume XIII, M1130.140, B 1e (p. 14).
19. For jointly owned property or interest in an undivided estate: When a partition suit is necessary in order to liquidate the property, a continuing reasonable effort to sell property shall be demonstrated by filing suit with the court to partition the property within 60 days of proving the property is otherwise unsaleable (in accordance with section B.1.e.) and shall continue until the property is sold or 9 months, whichever is less. Any period of time in excess of 9 months to sell shall not be deemed reasonable and the property loses this exemption. Medicaid Manual, Volume XIII, M1130.140, B 3d (p. 15).
20. An individual with countable resources in excess of the applicable limit is not eligible for Medicaid. Medicaid Manual, Volume XIII, M1110.003, B 1 (p. 2).

**AGENCY DECISION:** The hearing officer sustained the action of the agency, based upon the following:

The Appellant was an ongoing LTC Medicaid enrollee. The local agency exempted the Appellant's home during the process of guardianship appointment. Later, the local agency discovered, while researching land records, that the Appellant also had an interest in heir property that had not been reported. The local agency determined that the Appellant's interest in the heir property exceeded the resource limit for the LTC covered groups. Therefore, the local agency terminated the Appellant's Medicaid eligibility.

**APPLICABLE CITATIONS FOR ACTION:**

**United States Code**

42 U.S.C. §1396a (a)(17)(B)

**Code of Federal Regulations,**

42 CFR §435.601(b), (f)

42 CFR §435.845

**Code of Virginia,**

§ 64.1-1

§ 64.1-46

**Virginia Administrative Code,**  
12 VAC 30-40-240, B 1

**Medicaid Manual, Volume XIII**

M0130.200, H (p. 8)  
M1110.001, A (p. 1)  
M1110.003, A-B (p. 2)  
S1110.100, B 1 (p. 3)  
S1110.200 (p. 6)  
M1110.400, A 1 (p. 10)  
M1110.510, C 1 (p. 12)  
M1110.600, A (p. 18)  
M1120.010, C 2 (p. 3)  
M1120.215, A (p. 26)  
M1120.215, C 2 (p. 27)  
M1130.140, B 1e (p. 14)  
M1130.140, B 3d (p. 15)  
M1130.160, A 1, 2 (p. 16)